

## **VII. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT**

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The provision of a free appropriate public education in the least restrictive environment is the foundation of IDEA. The provisions of the statute and regulations (evaluation, IEP, parent and student involvement, transition, participation in large-scale assessment, eligibility and placement decisions, service provision, etc.) exist to achieve this single purpose. It means that children with disabilities receive educational services at no cost to their parents, and that the services provided meet their unique learning needs. Children with disabilities are educated, to the maximum extent appropriate, with children who do not have disabilities and, unless their IEPs require some other arrangement, in the school they would attend if they did not have a disability. Any removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The IDEA '97 Committee Reports of the Senate Committee on Labor and Human Resources and the House of Representatives Committee on Education and the Workforce emphasized that too many students with disabilities are failing courses and dropping out of school. Those reports noted that almost twice as many children with disabilities drop out as compared to children without disabilities. They expressed a further concern about the continued inappropriate placement of children from minority backgrounds and children with limited English proficiency in special education. The Committees stated their intention that "once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it."

### **Validation Planning and Data Collection**

#### **Prior Monitoring**

OSEP's 1999 Monitoring Report of New Jersey identified three areas of noncompliance in the provision of a free appropriate public education in the least restrictive environment:

1. **Placement in the Least Restrictive Environment:** (a) NJSDE did not ensure that students with disabilities are placed in the least restrictive environment, including that removal of student with disabilities from the regular education environment occurs only if the child's education cannot be achieved satisfactorily in regular classes with the use of supplementary aids and services; (b) NJSDE did not ensure that students with disabilities participate with nondisabled students in both academic and nonacademic activities to the maximum extent appropriate; and (c) NJSDE's monitoring system did not identify systemic noncompliance with respect to placement of students with disabilities in the least restrictive environment.

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2. **Related Services**: NJSDE did not ensure that: (a) psychological counseling as a related service was provided if students with disabilities needed that service to benefit from special education; (b) students with disabilities were receiving a "standard" amount of time for counseling services and, thus, IEPs were not individualized; (c) IEPs did not contain goals and objectives that addressed the needs necessitating related services; and (d) the State's monitoring system identified noncompliance with respect to related services.

3. **Extended School Year Services**: NJSDE failed to identify noncompliance for the requirements of extended school year services.

In response to the 1999 OSEP monitoring report, OSEP required NJSDE to implement a corrective action plan addressing the following requirements:

1. Complete a program review to verify requirements for the least restrictive environment provisions
2. Schedule and complete follow-up visits to verify the implementation of corrective action plans in all local education agencies found to be noncompliant.
3. Prepare a statewide analysis of the results of the on-site visits regarding the least restrictive environment provisions
4. Based on the results of the on-site visits, NJSDE must propose to OSEP and implement follow-up reviews
5. Prepare an analysis of its program review system and provide modifications to its system based on this analysis.
6. Conduct on-going training for child study supervisors, special education administrators in receiving programs, special education teachers, and regular education teachers regarding the requirements for least restrictive environments.
7. Conduct on-site program review visits to receiving programs and verify the implementation of corrective action plans in all local education agencies found to be noncompliant.

**NJSDE Corrective Actions Taken**

In response to the 1999 OSEP report, NJSDE developed the following corrective actions related to IDEA provisions addressing student placement in the least restrictive environment:

- Directed the four local education agencies in which OSEP found noncompliance to develop corrective action plans to immediately address all areas of noncompliance
- Included these four local education agencies in the State's pilot year of the new self-assessment based monitoring system
- Issued a statewide policy statement regarding regulatory requirements and the State's position on placement of students with disabilities in the least restrictive environment
- Provided technical assistance to twenty-eight local education agencies identified in the Abbot Decision regarding the creation of preschool programs with a focus on increasing regular education placement options for preschool children with disabilities
- Conducted statewide training for local education agency administrators

- Developed a model IEP format that provides local education agencies with a clear process for making individual determinations regarding placement decisions and a way to document that individualized decision-making process in the IEP
- Published an inclusion newsletter to disseminate best practices information to parents and educators
- Instituted significant regulatory changes to increase the opportunity for preschool children with disabilities to be placed in regular education settings
- Focused capacity building funds on the State's goal of increasing the number of students with disabilities who are educated in general education programs with appropriate supports and services

### **NJSDE Self-Assessment**

The Statewide Special Education Self-Assessment Report addressed the extent to which students with disabilities receive a free appropriate public education in the least restrictive environment, which promote high standards. The Report identified six strengths: (1) training and technical assistance are focused on promoting a decision-making process for placing student with disabilities in general education programs with appropriate program modifications and supports; (2) NJSDE is collaborating with other agencies in the provision of a variety of training activities and information dissemination, such as the Inclusion Newsletter, in collaboration with the State Parent Advocacy Network (SPAN), focusing on the least restrictive environment; (3) NJSDE disseminated a comprehensive and positively received policy paper addressing the topic of placement in the least restrictive environment; (4) the NJSDE efforts appear to be influencing an expanded continuum of placement options; (5) the NJSDE monitoring of local school districts is more stringent; and (6) revision of the funding formula has removed incentives for placing students in separate programs.

The Self-Assessment Report also identified areas or opportunities for improvement: (1) many districts do not have in-district placement options for children with more significant disabilities, especially children with challenging behaviors; (2) school administrative leadership does not always facilitate placement in the least restrictive environment; (3) the use of non-traditional supports and strategies to facilitate the inclusion of students with disabilities is often not considered; (4) recommendations are often made based on what is available instead of what is needed; (5) not enough different inclusive models are being implemented for replication; (6) rationale for restrictive placements is not always well documented; (7) children of minority/race ethnicity or children who speak languages other than English are disproportionately placed in the most separate settings; (8) there is a lack of appropriate in-class support, accessible facilities and related services within general education; and (9) separate classes, pull-out services and out-of-district placements are the rule not the exception.

### **A. AREA OF STRENGTH**

#### **Statewide Training/Technical Assistance Initiatives and Local Promising Practices**

NJSDE has designed and implemented statewide initiatives to enhance local capacity to provide greater placement options for students with disabilities, thereby increasing opportunities for

students to be served in the least restrictive environment. The initiatives include: (1) training in the 28 Abbott Districts to address placement of preschool children; (2) using capacity building funds (\$4.5 million) for grants to 67 local districts with the highest number of restrictive placements to address reduction of restrictive placements; (3) collaborating with the New York University Equity Assistance Center in response to the memorandum of understanding between NJSDE and the Regional Office for Civil Rights, U.S. Department of Education, to address the issue of overrepresentation of minority students in restrictive placements; (4) collaborating with the Developmental Disability Council in presenting an Inclusion Institute in ten local education districts; (5) conducting biweekly oversight of progress in high risk districts; and (6) instituting targeted reviews of local education districts as a result of complaint investigations and monitoring findings.

In addition, OSEP visited a local program at Metuchen High School in the Metuchen School District that demonstrated practices that the State believed to evidence exemplary services for students with disabilities in the least restrictive environment. The New Jersey Developmental Disabilities Council also recognized the Metuchen High School program for its exemplary inclusion practices. The foundation of the school's inclusion program is the philosophy that all children belong in the school, with goals toward not only providing quality special education services, but to increasing the acceptance of people with disabilities among the entire school and community. The school has taken proactive steps to increase the collaboration among regular and special education teachers and parents. The school has approached inclusion in a manner that has promoted the confidence of regular education teachers in meeting the special affective, intellectual and psychological needs of students with disabilities, especially students who are emotionally disturbed and behaviorally challenged. OSEP concurs with NJSDE that the program is promising and suggests the State continue to encourage other districts to replicate this model.

## **B. AREAS OF NONCOMPLIANCE**

### **1. Removal**

#### **(a) Lack of Placement in the Least Restrictive Environment**

34 CFR §300.550 requires each public agency to ensure that, to the extent appropriate, children with disabilities are educated with children who are not disabled. Placement in special classes, separate schooling or other removal of children with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs and not on the category of the child's disability.

In OSEP's previous monitoring reports, OSEP found that the NJSDE did not ensure that students with disabilities were placed in the least restrictive environment. Further, NJSDE failed to ensure that students with disabilities were removed from the regular education environment only when the child's education could not be achieved satisfactorily in regular classes with the use of supplementary aids and services. Previous reports also indicated that for children with

disabilities in self-contained classes and separate schools, participation in nonacademic and extracurricular services and activities with nondisabled peers was not an individualized decision based upon an IEP. New Jersey revised the State's monitoring system (based on fifteen areas, one of which is least restrictive environment) and began using the revised monitoring system during the 1999-2000 school year. NJSDE made findings related to placing students in the least restrictive environment in all eight local education agencies visited by OSEP in 2000.

OSEP found in 2000 that many children with disabilities are now placed in less restrictive placements than they were at the time of OSEP's 1998 visit. OSEP's 1999 Report indicated that in one school district, all students classified as "educable or trainable mentally retarded" were placed in separate segregated settings. Although OSEP notes that these students have now been placed in a regular high school building and have the potential for increased interaction with nondisabled peers, OSEP observed and educators confirmed that the students remain in self-contained classrooms in one isolated section of the high school building. In another district, an administrator confirmed that many of the students with multiple disabilities have returned to the district from out of district placements. Through interviews with teachers and administrators OSEP found that students who returned from these placements tended to be placed in self-contained settings and moved, as a group, from class to class limiting interaction with nondisabled peers. Decisions for removal of these students from regular education classes continued to be based on other factors, including the category of their disability rather than on their individual needs. OSEP also interviewed local school-based and districtwide staff who administer the Families and Children Early Education Services (F.A.C.E.S.) preschool program in the Vineland School District and the school reform program at Rafael Codero Molina School in the Camden School District, two programs which demonstrated innovative approaches to providing a free appropriate public education in the least restrictive environment for students with disabilities. However, OSEP confirmed through interviews with teachers and administrators in all districts visited by OSEP that students are not, in all cases, placed in the least restrictive environment.

#### OSEP Follow-Up Visit in 2001

In four of the districts visited by OSEP in June, 2001 two of the districts had corrected noncompliance in the area of least restrictive environment and the other two districts were in the process of beginning implementation of their corrective action plans approved by NJSDE in March 2001. New Jersey is providing direct oversight and targeted technical assistance in these two districts to ensure effective correction of noncompliance in the area of least restrictive environment.

#### **(b) Segregated Placement – Students with Behavioral Issues**

34 CFR §300.346(a)(2)(i) requires that the IEP team, in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address the behavior.

OSEP found that in the case of children, whose behavior impedes their learning or that of others, the IEP team did not consider strategies, including positive behavioral interventions, strategies

and supports to address the behavior. For example, in seven of the eight local education agencies visited by OSEP, special education directors, special education teachers, child study team members and school psychologists stated they were unaware of the requirements of §300.346(a)(2)(ii), and that they did not include the required consideration as part of the IEP process. They specifically stated they did not understand how to develop appropriate behavior intervention plans in all seven of the eight districts. Further, in one local education agency, regular education teachers reported behavior issues to be the primary barrier to having more students in their regular education classrooms. In another local education agency, school personnel confirmed that the "Proactive Behavior Management Plan" contained in several students' IEPs was "merely a check off identifying target behaviors." Several administrators in this district acknowledged that the behavior intervention plans were not developed through the IEP process. The behavior plans were not based on an evaluation or assessment of the individual student's needs. This issue had been identified in an earlier state monitoring report and was being addressed in the local education agency's corrective action plan. In a third local education agency, teachers were not aware of IDEA requirements concerning behavior intervention strategies. Teachers believed the child study team had the responsibility to implement behavior intervention plans.

When OSEP asked interviewees in eight local education agencies to identify the barriers to placing students with disabilities in regular education classes, many special and regular education teachers, child study team members and administrators agreed that "behavior is the number one barrier." They further explained that class sizes are smaller for students in self-contained placements and special education teachers are trained to address the challenging behaviors of these students. They reported that regular education teachers, in particular, need training in classroom management to address the special needs of this population. In one of the local education agencies, the administrator stated, "Massive training for teachers is needed. These individuals are not adequately prepared to address behavioral issues." An administrator in a second local education agency reported that Child Study Team members are "inclined to place students with behavior management issues in out-of-district placements." In a third local education agency, a building administrator and a special education teacher both agreed that students are placed in self-contained classes for behavioral reasons. They felt that some of these students were socially maladjusted rather than emotionally disturbed. There was misunderstanding of requirements that the IEP team consider positive behavioral interventions and strategies when a student's behavior impedes his or her learning or that of others.

As described in the finding below regarding the provision of related services, OSEP found that regular education facilities are not equipped with adequate supports and services, such as psychological counseling services, to allow students with emotional disturbances to remain in the schools where they would normally attend or to return to these locations in a timely manner. In addition, administrators and teachers stated they were unaware of IDEA requirements concerning the provisions related to functional behavioral assessments and the development and implementation of behavior intervention plans.

**(c) Impact of Administrative Practices on Placement**

Teachers and administrators identified four administrative practices that led to placing students in more restrictive environments: (1) class grouping, (2) limitations on class size and lack of space (3) lack of communication between IEP teams and class schedulers, and (4) the misunderstanding about New Jersey rules and regulations regarding the use of the co-teaching model.

At schools in three local education agencies, students with disabilities were grouped together for scheduling purposes throughout the day even though many of their teachers stated these students, based on the educators observation and assessment of the students, would have been successful in regular education classrooms with nondisabled students for music, art, and physical education subjects. In these local education agencies, school personnel stated that scheduling students with disabilities in groups was a means of integration because students moved among a variety of classrooms. They further explained the students were instructed by regular education teachers and walked in the hallways between classes with nondisabled peers. Administrators in these local education agencies reported to OSEP that the students stayed together throughout the day and did not have classes with nondisabled peers and that no individualized placement decisions were made about the individual members of these groups. Although this type of grouping did not allow students with disabilities the same opportunities for instruction in regular education classes (including extracurricular and nonacademic instruction), the administrators believed this arrangement provided students with disabilities increased opportunities for socialization in the hallways with nondisabled students. The IEPs reviewed by OSEP in the three local education agencies stated the students would be in regular education classes such as music and physical education. However, while regular education teachers taught these students music and physical education, students with disabilities remained in the same segregated group throughout the day.

Educators in all eight local education agencies stated that lack of space and administrative limitations on class size were among the reasons for placing students in a more restrictive environment. In five local education agencies at the high school level, educational personnel who develop class schedules make decisions about appropriate courses where students are to be placed without considering the special needs of individual students with disabilities. When placing students with disabilities in elective courses, there is no communication mechanism between the school class scheduler and the IEP team to ensure a free appropriate public education in the least restrictive environment. For example, in one local education agency, a student's course of study for the current school year indicated the student was taking Algebra II. The special education teacher was surprised to learn in an interview with OSEP staff that the student was enrolled in Algebra II because the student had not taken Algebra I. In a second local education agency, a student was enrolled in drafting as an elective because that was the course which had space for the student when the scheduler compiled the school's schedule. The student had a disability that severely impaired his ability to perform drafting assignments. The teachers said the student was not likely to receive a passing grade during the first quarter. The teachers also said they had not been informed about accommodations and modifications to assist the student to be more successful in the class. In these instances, class size, space, and availability of seats were reported to be the primary factors for determining in which classes students with disabilities are placed. In one of these local education agencies, four special education teachers

reported that the IEP teams are not empowered to make decisions about the extent to which a child will be educated with nondisabled children. The IEP team does not have input into the decision-making process for individual class assignments. If a class is full, a student will not receive the opportunity to participate in a regular education class even when the IEP states the least restrictive environment would be a regular education class. In addition to the preceding administrative practices, other factors were identified, including insufficient resources such as supplies and equipment, parent choice, and attitudes of school personnel.

In one local education agency, there was a misunderstanding among educators about the use of co-teaching and in-class support. Teachers from this local education agency believed that the New Jersey State law prohibited high schools from using the co-teaching model. NJSDE's monitoring report of this local education agency stated that the co-teaching model had the potential to greatly decrease the number of students who are served in segregated special education classes.

## **2. Lack of Psychological Counseling Services as a Related Service**

34 CFR §300.300(a)(3)(i) requires that services provided to children with disabilities address all of the child's identified special education and related services needs. Public agencies must provide psychological counseling to each child with a disability who requires that related service to benefit from special education. 34 CFR §300.24(b)(9)

When compared to previous monitoring visits in New Jersey, OSEP found evidence in some local education agencies of increased availability of psychological counseling services for children with disabilities. However, in six of the local education agencies visited by OSEP in 2000, special education teachers, regular education teachers, special education directors, building administrators and child study team members continue to report that psychological counseling services were not provided in all cases for children who needed the services to benefit from special education. New Jersey revised the State's monitoring system (based on fifteen areas, one of which is psychological services as a related service) and began using the revised monitoring system during the 1999-2000 school year. NJSDE made findings related to providing psychological services as a related service in these six local education agencies:

In one local education agency, two special education teachers reported that counseling services as set forth in the IEP were not provided due to the absence of adequate staff. The guidance counselor was available only one day per week. Only three of the nine students in the school who had psychological counseling services written into their IEPs received services. Six students who needed the services were unable to receive them. In another local education agency, the IEPs for several students classified as emotionally disturbed stated that these students were receiving 15 minutes of psychological counseling two to four times per month. When queried about the frequency and duration of this service, teachers reported that this determination was an administrative decision based on the availability of qualified staff, rather than the individual needs of each child.

In another local education agency three child study team members reported that students are referred to the local mental health clinic for counseling even if they needed psychological



counseling to benefit from special education. The building administrator in this local education agency said the school provides the parents with a list of outside resources but "it is up to the parents to get the services." If a therapist is recommended and the parent does not follow through, the principal will talk to the parent and will require the parent to make an appointment for psychological services in lieu of suspension.

In three additional local education agencies, educators, parents and child study team members said the provision of psychological services are provided by agencies other than the school and at the parents' expense. In one of these local education agencies, six child study team members, two counselors, seven special education teachers, and the special education director stated that counseling services are not obtained through the IEP regardless of student need. Child study team members referred parents to community resources. One counselor reported that parents were asked to use their insurance to seek mental health counseling. A school psychologist in this local education agency said counseling was identified as a need in a student's re-evaluation but was not discussed at the IEP meeting because the "floodgates" would open if psychological counseling was offered as a related service. In another local education agency, special and regular education teachers said when students needed psychological services to benefit from special education, the parents were referred to outside agencies and that guidance counselors would work with students on an emergency, crisis situation. In another local education agency, the child study team members said psychological services, when needed, were obtained providers were not evident through interviews with teachers, child study team member outside the school. Linkages with outside psychologists, and guidance counselors.

During the review of student files by OSEP, one of the files showed that a student with an emotional impairment would require psychological counseling in order to benefit from special education. However, during interviews with school staff, teachers said the student was not receiving psychological counseling services. OSEP also reviewed the student's transcript to note the student's progress in the general curriculum. The transcript indicated failure in 80-90% of classes over a two-year period. Two regular education teachers told OSEP that the student had exhibited many behavioral problems during the previous school year and the teachers saw a continuing need to focus on possible strategies to improve the student's emotional condition in the present school year. When OSEP asked the child study team at what point the IEP team would consider appropriate psychological counseling to meet the needs of this specific student, the child study team members said that, although the school has a school psychologist on staff who could potentially provide the individual counseling services to meet this child's needs, the psychologist is unable to do so because of a high caseload and other duties that preclude the appropriate provision of psychological counseling to this child. Child study team members further stated that the school district was not required to pay for the services from an outside agency because school staff was qualified to provide the services.

#### OSEP Follow-Up Visit in 2001

In the four districts visited by OSEP in June, 2001, one district did not have a finding in the area of psychological services as a related service, one of the districts had corrected noncompliance in the area of psychological services as a related service and the other two districts were in the process of beginning implementation of their corrective action plans approved by NJSDE in

March 2001. New Jersey is providing direct oversight and targeted technical assistance in these two districts to ensure effective correction of noncompliance in the area of psychological services as a related service.

### **3. Failure to Consider Extended School Year Services on an Individual Basis**

34 CFR §300.300 requires that a free appropriate public education be made available to all children with disabilities. In addition, 34 CFR §300.309 requires that extended school year services (ESY) be provided in accordance with an appropriate IEP that meets Part B requirements if necessary to provide a free appropriate public education for a particular child.

New Jersey revised the State's monitoring system (based on fifteen areas, one of which is extended school year services) and began using the revised monitoring system during the 1999-2000 school year. NJSDE made findings related to extended school year services in all eight local education agencies visited by OSEP in 2000.

While NJSDE reissued a policy bulletin regarding the provision of extended school year services and developed and disseminated a model IEP form to include the consideration of extended school year services at annual IEP meetings, in four of the eight local education agencies visited by OSEP, the consideration of extended school year services was not made on individual basis. One of the districts had no mechanism in place to ensure that each child with a disability who is in need of extended year services is identified and provided services based on his or her IEP. In three of the local education agencies, special education teachers were not familiar with the criteria for determining whether a child is eligible for extended year services. In one local education agency, the extended school year service was regular summer school if the parent requested the service. These local education agencies were cited by NJSDE as being out of compliance with the requirement concerning extended school year services.

In another local education agency, three special education teachers stated the locally developed set of twelve criteria to qualify students for extended year services was too restrictive because a student had to meet eight of the twelve criteria for extended year services even when children needed the services to benefit from special education. The twelve criteria are: (1) parent request, (2) severe socialization difficulty, (3) evidencing significant cognitive delay, (4) in need of direct speech/language therapy, (5) displays autistic behavior, (6) self-help skills are poor, (7) evidence that student skills would significantly regress, (8) behaviors are such that students require strict behavior programming, (9) in need of direct occupational therapy services, (10) in need of direct physical therapy services, (11) teacher recommendation, and (12) child study team recommendation. While none of the twelve criteria is inconsistent with Part B requirements, a public agency may not deny extended school year services to a child who needs such services as part of a free appropriate public education because the child does not meet at least eight of those twelve criteria. Although the special education director in this local education agency reported the twelve criteria were only to serve as a guide when considering extended year services, the teachers' understanding was that eight of the twelve criteria had to be met before extended year services were provided. When the OSEP reviewed the information on the district's IEP form, the IEP form confirmed the teachers' understanding. The state monitor accompanying OSEP agreed this was a problem and stated there would be activities to address this issue because the

state had identified extended school year services as an issue in a previous monitoring report in the local education agency. Part B does not permit a public agency to deny extended school year services to a student because the student does not meet eight of twelve district criteria.

#### OSEP Follow-Up Visit in 2001

In four of the districts visited by OSEP in June, 2001 two of the districts had corrected noncompliance in the area of extended school year services and the other two districts were in the process of beginning implementation of their corrective action plans approved by NJSDE in March 2001. New Jersey is providing direct oversight and targeted technical assistance in these two districts to ensure effective correction of noncompliance in the area of extended school year services.

#### **4. Denial of Related Services and Delays in Evaluation Due to an Insufficient Supply of Personnel**

The IDEA regulations at 34 CFR §300.300(a) require that children with disabilities be provided services that address all of the child's identified special education and related services needs. In addition, 34 CFR §300.381 requires that each State must analyze State and local needs for professional development for personnel to serve children with disabilities.

OSEP found evidence of an inadequate supply of personnel in seven local education agencies. In one local education agency, the special education director told OSEP that there were ten students with disabilities whose IEPs specify that they were to receive speech services. However, the local education agency was not providing the speech and language services because the local education agency had been unable to hire speech and language pathologists due to personnel shortages in the state.

In a second local education agency, special education teachers and the special education director stated there were personnel shortages in the area of speech therapy. The local education agency had three vacancies. The impact of the vacancies prohibited students from receiving services specified in their IEPs for the first three weeks of the 2000-2001 school year. In a third local education agency the Child Study Team reported critical personnel shortages for speech and language pathologists. The special education director in the local education agency confirmed that shortages in the areas of speech and language pathologists and special education teachers were critical. The director had requested a waiver from the state so that personnel would be able to fill these positions on an emergency or temporary basis. The severe shortage of speech and language pathologists impacted the delivery of services in accordance with students' IEPs. In the same local education agency a building administrator stated there was a shortage of speech and language pathologists and certified special education resource teachers. Students were not receiving services identified in their IEPs. In a fourth district the special education director reported there was a shortage of speech therapists. While all students were receiving services, the frequency and the duration of the services were reduced from those specified in the IEP.

In two large urban local education agencies and one rural local education agency, OSEP found that the lack of qualified examiners delayed initial evaluations and re-evaluations of students.

whose first language was not English. The directors of special education in the local education agencies confirmed that there is a shortage of qualified examiners for students whose first language is Spanish and who have limited English proficiency. One of the directors also identified vacancies in the positions of school psychologist, learning consultant (a member of the child study team), speech and language pathologist, occupational therapist and physical therapist.

### **C. SUGGESTIONS FOR IMPROVED RESULTS**

#### **1. Providing a continuum options for preschool aged children**

Among local education agencies visited by OSEP, special education directors stated that, in general, the state has limited public options for preschoolers, thus, making it difficult to serve preschoolers with disabilities in a regular education preschool classroom. One of the directors identified a major impediment as the lack of coordination between private preschools serving children with developmental delays and the local education agency's small early childhood program. Even in Abbott districts<sup>9</sup>, where NJSDE has provided additional funding for districts to provide publicly funded preschool programs, preschool children with disabilities in several of the Abbott districts still have limited access to regular preschool programs. In one of the large urban Abbott districts visited by OSEP four-year-old preschoolers without disabilities attended full-day pre-kindergarten while four-year-olds with disabilities only had available half-day programs. NJSDE must continue its collaboration with the Abbott School District Office to optimize opportunities for children with disabilities to interact with and be educated with their nondisabled preschool peers.

#### **2. Increasing Participation of IEP Team Members in IEP Decision-Making Process**

In New Jersey, the composition of the IEP team includes members of the local education agency's child study team. The child study team is composed of school psychologists, learning disabilities teacher consultants and school social workers. These individuals have a variety of responsibilities that impact on identification, development of the IEP, and the placements of students with disabilities. In all districts, interviews with school personnel suggested that child study team members make most of the decisions related to students' instruction and placement. Teachers in all local education agencies explained that they have very little input into these decisions. Participants at IEP team meetings such as parents, special education teachers, regular education teachers and others serving on the IEP team who are not child study team members, look to the child study team as the "expert" members of the team. Additionally, these individuals said they often deferred to the child study team member regarding appropriate placement for the child. NJSDE must continue to provide technical assistance to IEP team members to ensure that all participants are equally represented at the IEP team meeting and that decisions made at the IEP meeting are representative of all meeting participants, including but not limited to child

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<sup>9</sup> Abbott districts include 28 poor urban school districts that were litigants in a longstanding court case (Abbott v Burke) regarding school funding inequities. Abbott districts receive additional school funds and are required to implement urban education reform initiatives (Whole School Reform) to ensure that public school children, including students with disabilities and limited English proficient students from the poorer urban school districts receive the educational entitlements guaranteed them by the Constitution and to meet the requirements of the decision of the New Jersey Supreme court in Abbott v Burke, decided May 21, 1998.

study team members (i.e. learning disability teacher consultant, school psychologist, social worker).

### **3. Contracting for Speech Therapy**

Educators, especially Directors of Special Education, in all districts identified the shortage of speech and language pathologists as a hindrance to timely provision of speech services. This concern was discussed in the section of the report addressing the adequacy of qualified staff. In four local education agencies educators further identified a part of this shortage to be caused by a state prohibition of direct local education agency contracts with speech pathologists. NJSDE confirmed this prohibition. The educators felt the law prevented their districts from providing speech services in accordance with students' IEPs. OSEP recommends that the NJSDE review this concern and, if the law is determined to be an impediment to providing speech services to students with disabilities who need such services to benefit from special education, take appropriate action to correct the effect of the law.

### **4. More Opportunities for Use of In-Class Support and Team Teaching/Co-Teaching Models**

In-class support is a resource placement option that allows for increased opportunities for students with disabilities to receive services in regular class settings. With this option, students receive their instruction in the regular education class rather than being pulled out of the classroom for instruction. Teachers in four local education agencies said more students with disabilities would be served in less restrictive environments if in-class support was more widely available. An administrator in one local education agency confirmed that efforts are being made to expand the in-class support option for students in self-contained settings. Personnel reported in a second local education agency that in-class support for students at the elementary and middle school levels had been expanded. Teachers and administrators in three districts indicated they had successfully implemented co-teaching models that created additional opportunities for students with disabilities to participate in the general education classroom. With this option, a regular and a special education teacher are assigned to a class full time. Regular education teachers indicated a need for increased use of co-teaching/team teaching models. They felt that having a second teacher in class for the entire day would have numerous benefits including behavior control, which was identified in this section of this Report as the major barrier for not having more students placed in regular education classrooms.

### **5. Improving Transition from Part C to Part B Programs**

Part C and Part B staff reported inadequate coordination and communication between Part B and C personnel and State staff as significant impediments to a smooth early childhood transition. The need for better communication and collaboration has been identified at the State level by both Part C and Part B personnel and state staff are identifying new procedures to ensure better transition for children who are moving from Part C services to Part B services. OSEP recognizes the efforts now underway at the State level to address the coordination and communication between Part C and Part B personnel in ensuring the smooth early transition from early

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intervention services to preschool programs and encourages NJSDE to finalize the interagency agreement between NJSDE and DHSS.